TRI-STATE RATE REGULATION
June 5, 2019

Overview of Tri-State's FERC Regulation Considerations

Tri-State operates in Interstate Commerce, providing wholesale electric and transmission service to members in four states and owning generation in a fifth state. Under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) regulates most providers of wholesale service. Tri-State has been exempt from such regulation either because it was a Rural Utilities Service (RUS) borrower or because it was wholly owned by small cooperatives and PPDs.

Historically, Colorado, Nebraska, New Mexico and Wyoming did not exercise rate regulation over Tri-State. However, in recent years both Colorado and New Mexico have exercised rate jurisdiction, which resulted in increased costs, unrecovered revenue and inconsistent rates to its members. It is likely that such regulation will increase in the future.

If a wholesale power provider operating in Interstate Commerce is to be rate regulated, it makes sense for it to be regulated by a single regulatory body. FERC would be a single decision maker with respect to rates and will apply consistent rates to Tri-State's members in each of its four states.

FERC regulation would pre-empt individual state rate regulation for generation rates, transmission rates, rate design, buyout disputes and all other rate related matters. Tri-State would be required to file proposed rates with FERC and FERC would establish just and reasonable rates through its regular rate setting process. Any member would have the right to participate in that process, including any hearings. In addition, any single member or customer would have the right to file a complaint over any Tri-State rate at the FERC.

The Tri-State board of directors is considering that Tri-State become regulated by the FERC. The board has discussed potential FERC jurisdiction since the New Mexico rate protests in 2012; however, the New Mexico and Colorado rate settlements reduced the urgency of the issue. About a year ago, staff was directed to seriously investigate the FERC option in the event of increased rate regulation so the board would have the FERC option available.

Key Questions

What is the current situation with state rate regulation?

Tri-State is no longer in a situation where its board of directors has sole authority for setting rates, and Tri-State is subject to different rate regulation in different states:

- Colorado—Rate regulation upon complaint of a single member
- Nebraska—No rate regulation
- New Mexico—Rate regulation when there are three protests
- Wyoming—No rate regulation

There is political pressure in New Mexico and Colorado for additional Tri-State regulation on facilities and rates. At some point, Wyoming and Nebraska could also assert jurisdiction.

Why become FERC regulated?

FERC regulation would eliminate inconsistent rate treatment across the states.

How would FERC regulation affect current state rate regulation issues?

FERC regulation would preempt rate regulation in Colorado, Nebraska, New Mexico, and Wyoming. It would eliminate the three-protest rule in New Mexico, moot the New Mexico Federal Court case, eliminate the rate complaint jurisdiction in Colorado and prevent new rate regulation in Wyoming and Nebraska, as well as in Colorado and New Mexico.

TRI-STATE RATE REGULATION
June 5, 2019

What are the benefits of FERC regulation?

FERC regulation would eliminate state jurisdiction over "buyouts" and eliminate costs of case-by-case opposition to state rate regulation. It would provide a higher level of rate certainty. FERC utilizes formula rates. FERC regulation is also likely a credit-positive with rating agencies. Tri-State would always have the option of leaving FERC regulation.

What are the concerns of FERC regulation?

With FERC regulation, Tri-State would be fully rate-regulated on generation and transmission rates, securities approvals, interlocking directorates, the sale of assets, and mergers and acquisitions. There would also be new costs, including an annual fee (approximately $1.3 million), litigation costs and increased staff. The future nature of FERC regulation is uncertain.

Would FERC regulation affect non-rate regulation by the states?

No. States could still regulate facilities or resource planning.

Are other wholesale electric service and transmission providers already regulated by FERC?

Yes. The Federal Energy Regulatory Commission regulates the rates of all wholesale electric service and transmission providers with a few exceptions:
- Providers that are owned by the government (public power)
- RUS borrowers
- Providers that are wholly-owned by small electric cooperatives (co-ops that sell less than 4M MWh per year)

Are other G&Ts serving members in multiple states FERC regulated?

Yes, we believe that every other G&T that is subject to regulation in multiple states has become FERC regulated.

Why isn't Tri-State already regulated by FERC?

Tri-State was historically exempt because it was a RUS borrower. It is currently exempt because it is wholly-owned by small electric cooperatives or public power districts.

How can Tri-State become FERC regulated?

Tri-State can become FERC regulated by adding a new member that is not a "small electric cooperative." Other G&Ts have added power marketers that are completely owned by third parties or who are jointly owned by the G&T and a third party; however, the member does not need to be a power marketer.

The board would need to establish a new class of membership and define its voting rights, ownership rights and patronage rights. Tri-State's bylaws provide that the board has authority to establish a new class of membership and determine the rights and liabilities of new members of the class—except that the board does not have authority to give such new member a board seat. Tri-State would then prepare and file all necessary pleadings, applications, tariffs, and information with FERC to become FERC regulated.

Will Tri-State FERC regulation cause members to be FERC regulated?

No. Distribution cooperatives are not regulated by FERC.